

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.485 of 1996

DATE OF ORDER: 6.6.96

BETWEEN:

C.BULLABBAI

.. Applicant

and

1. The Chief Personnel Officer,
South Central Railway,
Secunderabad,
2. The Divisional Railway Manager,
S.C.Railway, Vijayawada,
3. The Sr.Divisional Operating Supdt,
S.C.Railway, Vijayawada.

.. Respondents.

COUNSEL FOR THE APPLICANT: SHRI P.KRISHNA REDDY

COUNSEL FOR THE RESPONDENTS: SHRI D.F.PAUL, ADDL.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMINISTRATIVE)

JUDGEMENT

Heard Shri P.Krishna Reddy, learned counsel for the applicant and Shri V.Bhimanna for Shri D.F.Paul, learned standing counsel for the respondents.

2. The applicant in this OA while working as Goods Guard in the grade of Rs.330-560 was reverted by R-3 by the order dated 30.5.84 to the post of Assistant Guard for three years (recurring). That order on appeal was also confirmed by R-2. The applicant filed Writ Petition before the High Court of Andhra Pradesh which was transferred to this Tribunal and was renumbered as T.A.No.871/86. A Bench of this Tribunal had disposed of that T.A. by an order



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dated 8.6.86 allowing the OA and remanded the case to R-2 for fresh disposal after giving personal hearing to the applicant. The appellate authority after giving personal hearing, disposed of the appeal by the order dated 9.11.89 (Annexure V at page 15). The modified order by the appellate authority reads as below:-

"Accordingly he is informed that the penalty of reduction of lower grade of Asst. Guard in scale Rs.225-308 on pay Rs.260/- for a period of 3 years (recurring) with loss of seniority w.e.f. 16.6.84 imposed by Sr.DOS/BZA, the Disciplinary Authority, is modified to that of reduction in time scale at the minimum of the grade of Goods Guard on pay Rs.330/- in scale Rs.330-530 for a period of 3 years with recurring effect and with loss of seniority w.e.f. 16.6.84".

3. The applicant when he was working as Assistant Guard, performed journeys and for those journeys he received mileage in accordance with the rules. As the reversion order has been modified by the appellate authority by the order dated 9.11.89 to that of reduction in time scale at the minimum of the grade of Goods Guard on pay Rs.330/- in the scale of Rs.330-530 for a period of three years with recurring effect and with loss of seniority with effect from 16.6.84, it is stated that the applicant was given back wages as Goods Guard in the scale of pay of Rs.330-530 for the period he worked in the



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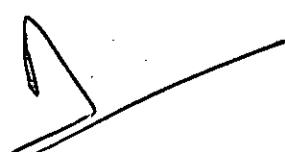
reverted post of Assitant Guard.

4. However, there was no order in regard to the payment of higher mileage at the rate applicable to Goods Guard for the period he worked as Assistant Guard as that reversion had been set aside.

5. The applicant in this OA submits that as the reversion has been modified and he was retained as Goods Guard by the modified order with effect from 16.6.84, he is entitled for mileage at the rate applicable to the Goods Guard for the period he worked as Assistant Guard. He further submits that the mileage for which he is entitled at higher rates is the mileage he had covered as Assistant Guard.

6. When he represented for payment of difference of mileage between the rates applicable to Assitant Guard and Goods Guard for the mileage covered by him as Assistant Guard, the same was rejected by the impunged order No.B/P.483/VI/Guards dated 29.6.93 (Annexure II) stating that he performed duties of Assisnat Guard only during the period in question and hence he is not eligible for arrears towards kilometrage as Goods Guard, even though he was paid arrears of pay and allowances as Guard 'C'.

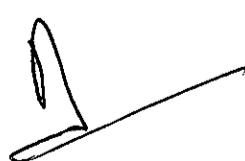
7. Aggrieved by the above, he has filed this OA praying for setting aside the impunged order No.B/P.483/VI/Guards, dated 29.6.93 (Annexure-II) and for a further direction to the respondents to pay him kilometrage for the above period as Goods Guard.



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8. The main contention of the applicant in this OA is that he was erroneously reverted to the post of Assistant Guard and as that order has been set-aside by the modified order of the appellate authority, he is entitled for the mileage applicable to the grade of Goods Guard and he should be paid mileage covered by him as Assistant Guard on the basis of that rate. The learned counsel for the applicant further submitted that as he was not permitted to discharge the duties of Goods Guard during the period in question, he is eligible to claim that rate.

9. When the case came up for hearing, the learned standing counsel for the respondents was asked to get necessary instructions from the respondents. The learned standing counsel submitted that he will get necessary instructions. But he pleaded that this OA is barred by limitation as the impugned order is dated 29.6.93 and this OA was filed on 26.3.1996. Though I ordered for filing a delay condonation application, I feel that filing of this OA may not be considered as time barred as the applicant had discharged duties during the relevant period as Assistant Guard and because of the modified order, the present prayer has arisen. As the pay and allowances had been paid to him already, the question of payment of mileage is also to be considered along with the pay and allowances on that basis and hence the period of limitation may not be insisted upon. In view of the above a petition for condoning the delay, is not insisted.



10. There is no doubt that the applicant was promoted as Goods Guard when the penalty of reversion as ordered by the disciplinary authority was set aside as per the modified order of the appellate authority. It is also a fact that he had been paid the back wages as Guard 'C' for the period he worked as Assistant Guard. But those reliefs have been given to him as it is his right to get back wages in the post from which he was reverted due to the modified order. But the payment of mileage cannot be considered on the same footing. Mileage is to be earned by actual performance of duties as Goods Guard and not as Assistant Guard. If a person does not perform actual duties stipulated for the post to claim mileage, he cannot get that mileage on some deemed consideration. As the applicant herein had discharged duties only of the Assistant Guard, he cannot claim mileage for the distance covered by him at higher rate. But whether he has a case ^{efus} for consideration to get the higher mileage rate as he was not permitted during that period to work as Goods Guard is a relevant point. If the modified order has been issued immediately after the order of his reversion, probably he would have performed the duty as Goods Guard. Hence the period he worked as Assistant Guard had to be treated as a Guard waiting for duty and on that consideration the rates applicable for Goods Guard on stationary duty should be paid to him. But he had already been paid mileage at the rate applicable to Assistant Guard during that period. Hence if the rate of mileage applicable to Goods Guard on

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stationary duty is higher than the mileage rates applicable to Assistant Guard, the difference in the mileage allowance should be calculated and paid to him for the period he worked as Assistant Guard. But if on the basis of the above calculation he has to pay back any amount to the Railways, the same need not be recovered from him as his reversion is set aside and the applicant is not responsible for not performing the duties as Goods Guard during that period.

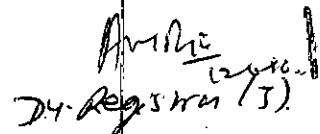
11. In the result, the following direction is given:-

During the period the applicant worked as Assistant Guard, he is entitled for mileage at the rates applicable to Goods Guard waiting for duty or on stationary duty. If that rate is higher than the rate for mileage applicable to Assistant Guard, the arrears due to the difference between these two rates for the total mileage covered by him as Assistant Guard should be paid to him for the period he worked as Assistant Guard. If on the basis of the calculation, the applicant has to pay back some amount to the Railways, no recovery should be affected on that count.

12. The OA is ordered accordingly at the admission stage itself.. No costs.



(R. RANGARAJAN)
MEMBER (ADMN.)



DATED: 6th June, 1996
Open court dictation.

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Copy to:-

1. The Chief Personnel Officer, South Central Railway, Secunderabad.
2. The Divisional Railway Manager, S.C.Railway, Vijayawada.
3. The Sr. Divisional Operating Supdt., S.C.Railway, Vijayawada.
4. One copy to Sri. P.Krishna Reddy, advocate, CAT, Hyd.
5. One copy to Sri. D.Francis Paul, SC for Rlys, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

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24/6/96
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CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

DAIED:

6/6/96

ORDER/JUDGEMENT

M.A. NO/R.A./C.A. NO.

B.A. NO.

IN
485/96

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDERS AS TO COSTS

* * *

No Spare Copy

